

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRENT KILLINGER,

Petitioner,

vs.

UNITED STATES OF
AMERICA,

Respondent.

CIVIL NO. 04-70187

CRIMINAL NO. 02-80510-01

DISTRICT JUDGE PAUL BORMAN
MAGISTRATE JUDGE VIRGINIA M.
MORGAN

FILED

DEC 15 2005

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

ORDER DENYING A CERTIFICATE OF APPEALABILITY

Petitioner appealed this Court's Order Denying Petitioner's Motion for Reconsideration, dated September 14, 2005, to the United States Court of Appeals for the Sixth Circuit. The Court indicated that in order to appeal this Court's decision under § 2255, this Court must issue a certificate of appealability ("COA"). *See* 28 U.S.C. § 2253(c)(1).

"A certificate of appealability may issue under [§ 2253(c)(1)] only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Where a district court dismisses a petition on the merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Where a district court dismisses a petition on procedural grounds:

a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right **and** that jurists of reason would find it debatable whether the


district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000) (emphasis added).

Upon review of the record, reasonable jurists could not debate whether this Court was correct in its assessment of Petitioner's constitutional claims, nor would jurists of reason debate whether this Court was correct in its procedural ruling. The Magistrate Judge's Report and Recommendation thoroughly analyzed all of Petitioner's constitutional claims and found them to be without merit. Similarly, this Court denied Petitioner's Motion for Reconsideration for failure to demonstrate a "palpable defect" in the Court's November 16, 2004 order.

This Court finds that Petitioner has not made a showing that this Court's decision was debatable or wrong. Accordingly, the Court DENIES Petitioner Certificate of Appealability.

SO ORDERED.



PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: DEC 16 2005